1947. **File No.** Fees Proc 47

Legal Deptt.

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C **BRANCH**

Subject:— Procedure in connection with Bills received from other Govt officers for fees to be paid to special Counsel engaged by them.

CP 12 /Fees

Fees Proc. 1/47

File No.

Gen. 194 e.

275-C

C O N T E N T S

Legal Department
Vol - Fees Proc./47.

Sr.No.	Compilation No.	Subject	Pages
	Fees Proc./47	Procedure in connection with Bills received from other Government officers for fees to be paid to Special Counsel engaged by them.	
	R.I.No.4137 dt. 5-4-47.	Letter from the Sessions Judge Surat - Regarding Fees in Criminal Cases.	

4137
5-4-47.

Submitted.

2. The Sessions Judge, Surat states that the P.P., Surat appeared before him on 14-3-47 to present only an application to adjourn a Sessions Case fixed for hearing on 17-3-47 and has claimed fees for that day under Rule 23 of the L. C. (C. of S) Rules, 1939. He wants to know whether the P.P., Surat is entitled to fees under the said rule for 14-3-47.

3. Rule 23 lays down that a P.P. is entitled to a fee of Rs. 18/- p.d. for every day in which he is actually engaged in Criminal work either in the Sessions Court or in any Magistrate's Court at his headquarters. As the P.P., Surat simply appeared before the S.J. on 14-3-47 to present an application to get a case adjourned which was fixed for 17-3-47, his appearance cannot be held to mean that he was engaged in Criminal work on that day in the Sessions Court. Provisos to rule 23 do not also support the payment of fees for such a work. If approved, the S.J., Surat, may be informed that the P.P., Surat is not entitled to claim fees for the date on which he simply presented an application for getting a case adjourned.

Sd/- D.R.P.

1-2

We should forward the S.J.'s letter to the P.P. for his explanation as to the circumstances in which he appeared on 14-3-47 to obtain adjournment of a case fixed on 17-3-47.

Sd/-

R.T.S

A. L. R.

R.D.P.
14-6-56

S.C.

No. 950 of 1947 Surat, 3rd April 1947.

From
V.B.Raju. Esquire, I.C.S.
Sessions Judge, Surat.

To
The Secretary to the Government of Bombay.
Legal Department,
BOMBAY.

Subject:- Fees in Criminal Cases.

Sir,

I have the honour to state that the Public Prosecutor, Surat appeared before me on 14-3-47 to present only an application to adjourn the Sessions Case fixed for hearing on 17-3-47 and has claimed fees for that day under Rule 23 of Law Officers (Conditions of Service) Rules, 1939 Edition.

I have therefore, the honour to refer this matter to you and to request you to let me know whether the Public Prosecutor, Surat is entitled to fees under the above Rules for 14-3-1947.

Youre Obedient Servant,

Sd/-

Sessions Judge, Surat.

R.D.P.
141656
5.C.

No. 4290

Legal Department

Bombay Castle, 28th April 1947.

Forwarded to the Public Prosecutor, Surat. He is requested to explain the circumstances in which he appeared on the 14th March 1947 to obtain adjournment of a case fixed on the 17th March 1947.

Sd/- R. M. M

for Secretary to Government.

R.D.P.
14/6/66

S.C.

Below the endorsement No. 4290 of the 28th April of the Secretary, Government of Bombay Legal Department.

No. 114 of 1947

Respectfully submitted.

The Sessions case No. 4 of 1947 was fixed for hearing on 17-3-47. On 14-3-47 the Police Sub-Inspector, Jalalpore sent a special messenger intimating to me that two important eye-witnesses in the case viz. Ramji Ranchhod and Bijia Bhana were not served with witness summonses, as they had gone out on a sea-voyage and their whereabouts were not known. It would have been perfectly right, if I had held up the information and appeared on 17-3-47 and applied for an adjournment on the ground that the principal eye-witnesses were not served. If I adopted that course, I would have been entitled to the fee for attendance on that date, because as Public Prosecutor I would be entitled to ask for an adjournment, if in the interest of the prosecution of a particular case an adjournment is necessary. The discretion as to how a Prosecution case is to be conducted is absolutely unfettered and a Sessions case has got to be heard from day to day to completion, and I would be justfied in asking the case to be adjourned as piecemeal hearing of a Sessions case is neither permissible nor advisable. I however in order to save public time of the Sessions Court, saw the Sessions Judge on 14-3-47 and intimated to him that I would be applying for an adjournment in the case on 17-3-47 and he may adjust his other Board accordingly. In this case, the Sessions Judge had given the Pauper Brief to Mr. B. V. Shah and the Government would have to pay his fee for attendance for 17-3-47, if the case was adjourned by an application made on 17-3-47. That was another reason which induced me to see the Sessions Judge on 14-3-47. Besides the members of Jury will be unnecessarily put to the trouble to attending the Court and their daily allowance will have to be paid by Government Witnesses already served will attend and Government would have to pay their travelling charges and subsistence allowances. I, therefore, thought it my duty to inform the Sessions Judge on 14-3-47 so that if he so desired, the witnesses and the Jurors

and Jurors may be informed and Mr. B. V. Shah may also be informed that Sessions case No. 4 of 1947 will not proceed on 17-3-47. It was suggested to me by the Sessions Judge that I may put application on that day for an adjournment so that on it, he can act, inform the Jurors, witnesses and Pauper Pleader and it was therefore that I put in an application on 14-3-47 as desired. Under the circumstance, set out I respectfully submit, I am entitled to the fee for attendance on 14-3-47.

2. The proviso to Rule 23 of the Law Officers Rules is quite clear. If a matter is adjourned and the intimation of adjournment is previously given by the Court, then no fee is allowable. But it does not mean, that the Public Prosecutor appears and asks for an adjournment which in his opinion it is necessary, he does not get his fee for attendance. It is an actual engagement in criminal work to appear and ask for an adjournment necessary in the interest of justice. If the Public Prosecutor appears and say the presiding Judge suddenly is falls ill and unable to attend or the defence asks for an adjournment on a proper ground and it is granted the matter is then merely adjourned, yet in these cases it cannot mean that Public Prosecutor does not get his fee for attendance because the matter is merely adjourned. If the Public Prosecutor appears and asks for an adjournment, the Judge will be there to refuse an adjournment, if it is unjustifiable and the Public Prosecutor is asking for an adjournment for merely earning that day's fee.

3. I have to refer the following instances which practically stand on the same footing as the present case.

1. Sessions case No.5 of 1939 of the Sessions Court, Surat. (Emp. vs. Daud Ahmed and others).	This case was fixed for hearing on 15-6-1939. The Public Prosecutor appeared on 29-4-39 and 12-6-1939 for filing applications for citing addotional witnesses both 29-4-39 and 12-6-1939 were allowed as days of attendance.

2. Sessions case No. 15 of 1939 (Imp. vs. Ramji Vala).	The Sessions case was fixed for hearing on 28-8-1939. It was actually heard from 1-9-1939. The Public Prosecutor appeared on 8-8-39 and applied for summons for new witnesses- fee for 8-8-39 was allowed.
3. Sessions case No. 16 of 1939 (Imp. v. Budhia Ravia).	The Sessions case was fixed for hearing on 25-9-1939. The Public Prosecutor appeared on 21-9-39 and applied for witness summons-fee for 21-9-1939 was allowed.

4. Now the Public Prosecutor on all instances merely presented an application. He did not actually conduct any criminal proceedings in Court on those days. The fee for attendance has been allowed. As new witnesses are necessary to be summoned for the efficient conduct of a prosecution, asking for adjournment on the ground the principal eye-witnesses are not available is also necessary for efficient conduct of the prosecution. I respectfully submit that as a point of principle it should be decided that the Public Prosecutor is entitled to fee for attendance which is for asking for an adjournment of a case on lawful and valid grounds.

Dated 5-5-47

Sd/-

Public Prosecutor, Surat.

R.D.P.
14/6/56

S.C.

Submitted.

2. Please see letter from the Sessions Judge, Surat at pages 3 ante and the endorsement from the Public Prosecutor, Surat at pages 6-7 ante in connection with a question whether the Public Prosecutor is entitled to claim fees under rule 23 of the L. O. (C. of S.) Rules, 1939, in a criminal case for 14-3-47 on which day he had only presented an application to get the case adjourned which was fixed for hearing on 17-3-47.

3. The Public Prosecutor Surat in his endorsement at pages 6-7 ante mainly contends that upon the intimation from the Police Sub-Inspector, Jalalpur, that two important eye-witnesses in the case were not served with witness summons, he applied for an adjournment of the case and thus saved Government from expenses of pauper pleader's fees for the day, daily allowance to Jurors and travelling charges and subsistence allowances to witnesses and cites three cases in which the Public Prosecutors in the past had claimed and allowed fees under similar circumstances.

4. In this connection attention is invited to the letter from the Accountant General, Bombay which resulted in the issue of R.L.A.'s circular No. 1884, d/ 13-3-44. According to this circular it is incumbent on the part of the trying Judge or Magistrate to certify in the court certificate under rule 196(2) of the Law Officers' Rules that on none of the specified dates were the proceedings limited to (a) adjournment with previous intimation or (b) the delivery of judgement. In this particular case the date fixed for hearing was 17-3-47 and with a view to save Government from expenses the Public Prosecutor had put in an application on 14-3-47 for an adjournment of the case fixed for hearing on 17-3-47. The intention of the P.P. in doing so may be commendable but his action in making an application on 14-3-47 for an adjournment of the hearing of the case fixed on 17-3-47 and claiming the fees for 14-3-47 is technically not correct and is without any precedent. The P.P. is meant for looking to the interest of Government and for that he is paid a monthly

remuneration. If approved the Sessions Judge, Surat, may therefore be informed that the P.P., Surat is not entitled to claim fees for the date on which he simply presented an application for getting the case adjourned.

Sdl — In view of (a) Proviso (a) & (b) of rule 23 of L. O. (C. of S.) Rules; (b) the fact that the P.P. is meant for safeguarding the interest of Govt. for which he is paid a retainer of Rs. 130 p.m. vide rule 20 L.O. (C.of S.) Rules; and (c) the place when he had to go for applying for the adjournment being the place of his head-quarters; it is difficult to support the request of the P.P., Surat. The instances put forth by him in paras 3 & 4 of his letter, that he was allowed fees for such work in the past does not justify his claim in view of the rule cited above. The reply proposed at "A" on page 9 ante may be approved A copy of it may be forwarded to the P.P., Surat with further remarks that the Secy.to Govt. L. D. does not support his case in view of (b) & (c) above.

Sdl — SAS. I am not sure that proviso (a) to Rule 23 applies. It provides that a P.P. is not entitled to fee for any day on which a case in merely adjourned, if intimation of the adjournment has been given to him before the date of hearing. The previous intimation is obviously an intimation from the Court in which no application for adjournment and no appearances of the P. P. in necessary on the date fixed previously for hearing and consequently the P.P. cannot claim any fees. But here the P.P. had received no such intimation. It is contemplated by rule 23(a). The case was actually reliably fixed for hearing on 17-3-47. On 14-3-47 the P.P. received information that two of his principal witnesses were not served. He had no option out apply for an adjournment on 17-3-47. I think the P.P. acted commendably and with due regard for the Public and Government interests in informing the S.J. on 17-3-47, that he would make an application on 17-3-47. It was on the suggestion of the S.J. that he gave an application for adjournment, and it is only after the granting of such an application the the P.P.

can be said to have received a previous intimation of the adjournment of the case from 17-3-47 to some other date. He claims fees for 14-3-47 and not for 17-3-47. If the S. J. had told him to apply on 17-3-47. That whether the application was granted or not, it would have been an effective hearing for which not only the P. P. but even the defence pleader would have been entitled to fees for that day.

In my opinion Rule 23 (a) does not apply and the P.P. is entitled to fees for 13-3-47.

ALR Rule 23 is very wide and the proviso(a) thereto has no application. P.P. may be paid his fees for appearance on 13-3-47 to file the application for adjournment of the case from 17-3-47 to another date.

RLA Under Rule 23, A Public Prosecutor is entitled to a fee for every day on which he is actually engaged in criminal work; and the proviso constitute the exeption to the general rule.

The Public Prosecutor in this case cannot be said to have been actually engaged in criminal work on the 14th. Proviso(a) is intended to compensate him for loss of work on a day on which a case in adjourned without previous intimation. The intention is, therefore, not to pay him fees for a day on which he is forced to take other work, even though the hearing of a case may have been originally fixed on that day. There would be no justification for paying him fees for a day on which the case in not fixed at all. Though the Public Prosecut may put in a formal appearance for work incidental to the case such as seeking an adjournment. As a Law Officer enjoying a salary, it is his duty by necessary forthought to avoid the waste of judicial time and to save public expenses by giving timely intimation in a case which for unavoidable reasons cannot be taken up on the appointed date; and he is not justified in claiming separate fees for giving such intimation. The practice in the districts is against the claim made by the P.

and the claim if accepted, would ~~xxxxx~~ violate the spirit of Rule 23 as explained above.

In terms of this note the D. J. may be informed that the P.P. is not entitled to fees for 14-3-1947.

Sd/- P. M. Lad

R. L. A.

RD.P.
141616
5.L.

No. 5234

Legal Department,

Bombay Castle, 22nd May 1947.

To

The Sessions Judge,
Surat.

Subject:- Fees in criminal cases.

Sir,

With reference to your letter No. 950, dated the 3rd April 1947, on the above subject I am directed to state that under Rule 23 of the Law Officers (Conditions of Service) Rules, 1939, a Public Prosecuter is entitled to a fee for every day on which he is actually engaged in criminal work; and the provisos constitute the exception to the general rule. The Public Prosecuter in this case cannot be said to have been actually engaged in criminal work on the 14th. Proviso (a) is intended to compensate him for loss of work on a day on which a case is adjourned without previous intimation. The intention is therefore, not pay him fees for a day on which he is free to take other work, even though the hearing of a case may have been originally fixed on that day. On the same principle there would be no justification for paying him fees for a day on which the case is not fixed at all, though the Public Prosecuter may put in a formal appearance for work incidental to the case such as seeking an adjournment. As a Law Officer enjoying a salary it is his duty by necessary forthought to avoid the waste of judicial time and to save public expenses by giving timely intimation in a case which for unavoidable reasons cannot be taken up on the appointed date; and he is not justified in claiming separate fees for giving such intimation. The practice in the districts is against the claim made by the Public Prosecuters and the claim if accepted, would violate the spirit of Rule 23 as explained above. I am therefore to inform you that the Public Prosecutor is not entitled to fees for 14th March 1947.

Yours obedient servant.

The practice in the districts is against the claim made by the Public Prosecutor; and the claim if accepted, would violate the spirit of Rule 23 as explained above. I am therefore to inform you that the Public Prosecutor is not entitled to fees for 14th March 1947.

Yours obedient servant,

for Secretary to Government.

R.D.P.
14/6/56

S.C.